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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

In re

BRADLEY R. MARSHALL,

Lawyer (Bar No. 15830).

Supreme Court No.
Public No. 05#00103

ASSOCIATION'S PETITION
FOR INTERIM SUSPENSION
(ELC 7.2(a)(2))

As required by Rule 7.2(a)(2) of the Rules for Enforcement of Lawyer Conduct (ELC), the Washington State Bar Association (Association) petitions this Court for an Order suspending Respondent Bradley R. Marshall from the practice of law during the remainder of the disciplinary proceedings against him. This petition is based on the Disciplinary Board Order Modifying Hearing Officer's Decision (Board Order) filed January 25, 2008. The Board unanimously recommended that Respondent be disbarred. The Hearing Officer's decision and the Board Order are attached hereto as Appendices A and B, respectively.

BACKGROUND

On May 2, 2006, the Association filed a First Amended Formal Complaint charging Respondent with violating Rules 1.2(a), 1.5(a), 1.7(b), 8.4(c), 8.4(d), 8.4(l), and 1.14 of the Rules of Professional Conduct (RPC).¹ The disciplinary hearing took place on February 20-27, 2007 before Chief Hearing Officer James M. Danielson. The Amended Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation (Findings & Conclusions) were filed on March 29, 2007. The Hearing Officer recommended that Respondent be disbarred for, among other things: (1) dishonest conduct, in violation of RPC 8.4(c); (2) charging unreasonable fees, in violation of former RPC 1.5(a); (3) representing multiple clients in a single matter without their written consent, in violation of former RPC 1.7(b); (4) failing to abide by his clients' decisions, in violation of former RPC 1.2(a); and (5) failing to provide an appropriate accounting of client funds, in violation of former RPC 1.14. Findings & Conclusions at 28-35.

On May 10, 2007, in a different proceeding, this Court suspended Respondent from the practice of law for 18 months for (1) dishonest conduct, in violation of RPC 8.4(c); (2) charging unreasonable fees, in

¹ All citations herein are to the RPC in effect before the September 1, 2006 amendments.

violation of former RPC 1.5(a); (3) representing multiple clients in a single matter without their written consent, in violation of former RPC 1.7(b); (4) failing to abide by his clients' decisions, in violation of former RPC 1.2(a); and (5) failing to provide an appropriate accounting of client funds and failing to remit client funds, in violation of former RPC 1.14. In re Disciplinary Proceeding Against Marshall, 160 Wn.2d 317, 332-39, 157 P.3d. 859 (2007).

On January 25, 2008, the Disciplinary Board unanimously approved the Hearing Officer's decision with three minor modifications relating to this Court's decision in In re Marshall, which was issued after the Hearing Officer's Findings & Conclusions. The Board unanimously recommended that Respondent be disbarred.

On February 12, 2008, Respondent filed a notice of appeal from the Board's decision.

NATURE OF THE MISCONDUCT WARRANTING INTERIM SUSPENSION

This disciplinary proceeding, Respondent's fourth,² arises out of Respondent's representation of Essie Mae Wormack, Lorraine Harris and Lindia Richard, former members of a Masonic organization who alleged

² Respondent's three prior disciplinary proceedings have resulted in an admonition, a reprimand, and an 18-month suspension. See Marshall, 160 Wn.2d at 346-47, 351.

they had been improperly suspended by that organization. Both before and after Respondent agreed to represent Mrs. Harris, Mrs. Wormack told Respondent, in no uncertain terms, that she was vehemently opposed to allowing Mrs. Harris to join the lawsuit. The Hearing Officer and the Board concluded that Respondent violated former RPC 1.7(b) by agreeing to represent Mrs. Harris over the express objection of Mrs. Wormack and without her written consent. Findings & Conclusions at 29-30; Board Order at 2; cf. Marshall, 160 Wn.2d at 336-38 (Respondent violated former RPC 1.7(b) by representing multiple clients with potential conflicts of interest without consent in writing after appropriate consultation).

Respondent's clients reasonably believed that the fees they paid Respondent for legal services would cover all the legal work to be performed on their behalf. They never agreed to make additional payments for work that Respondent hired other people to do for him, but that is precisely what Respondent had them do. The Hearing Officer and the Board concluded that Respondent violated former RPC 1.5(a) by charging his clients additional amounts for legal work that he hired others to do for him. Findings & Conclusions at 32-33; Board Order at 1; cf. Marshall, 160 Wn.2d at 332-36 (Respondent violated former RPC 1.5(a) by charging clients for legal work performed by contract lawyers he hired).

After an unsuccessful settlement conference, Respondent told his clients they would have to pay him additional fees if they wanted him to continue, even though they had already paid Respondent flat, “non-refundable” fees to litigate their claims. Mrs. Wormack and Mrs. Harris refused to pay additional fees, electing to hold Respondent to their prior agreements. The Hearing Officer and the Board concluded that Respondent violated RPC 8.4(c) and former RPC 1.5(a) by demanding additional fees from Mrs. Wormack and Mrs. Harris for representation they had already paid for. Findings & Conclusions at 28-29; Board Order at 1.

After the unsuccessful settlement conference, Mrs. Wormack and Mrs. Harris told Respondent that they wanted to pursue her claims at trial. But because they would not pay him the additional fees he demanded, Respondent tried to force them to settle their claims. The Hearing Officer and the Board concluded that Respondent violated former RPC 1.2(a) by failing to abide by his clients’ decisions not to settle their claims and by attempting to force a settlement contrary to his clients’ wishes. Findings & Conclusions at 34; Board Order at 1; cf. Marshall, 160 Wn.2d at 338-39 (Respondent violated former RPC 1.2(a) by pursuing an appeal not authorized by his clients).

To induce Mrs. Wormack and Mrs. Harris to settle their claims, Respondent lied to them. Respondent told his clients, falsely, that the court had directed them to sign the settlement agreement. He later told his clients, falsely, that their claims had been dismissed. The Hearing Officer and the Board concluded that Respondent violated RPC 8.4(c) by making these misrepresentations to his clients. Findings & Conclusions at 33-34; Board Order at 1; cf. Marshall, 160 Wn.2d at 332 (Respondent violated RPC 8.4(c) by engaging in “deceitful” conduct with respect to creation of fictitious hourly invoice).

Shortly before her case went to trial, Respondent agreed to complete the representation of Mrs. Richard for a flat fee of \$5,000, which Mrs. Richard promptly paid. After the trial, Respondent billed Mrs. Richard an additional \$21,787.50. When Mrs. Richard objected, Respondent filed an attorney’s lien, sent the bill to a collection agency, and sued Mrs. Richard.³ The Hearing Officer and the Board concluded that Respondent violated former RPC 1.5(a) by billing Mrs. Richard for an additional \$21,787.50 in fees after agreeing to complete her case for a flat fee of \$5,000. Findings & Conclusions at 30-31; Board Order at 1.

³ Respondent eventually abandoned the suit after forcing Mrs. Richard to hire a lawyer to defend her.

Respondent's misconduct continued during the investigation of this matter. First, Respondent failed to respond in a timely fashion to the Association's requests for information. The Hearing Officer and the Board concluded that, in doing so, Respondent violated RPC 8.4(l). Findings & Conclusions at 33; Board Order at 1; cf. Marshall, 160 Wn.2d at 346-47 (prior disciplinary action for failing to cooperate with Association's investigation). Finally, the Hearing Officer and the Board also concluded that Respondent violated RPC 8.4(c), 8.4(d) and 8.4(l) by making misleading statements at his deposition concerning the additional fees he demanded from Mrs. Wormack and Mrs. Harris. Findings & Conclusions at 30; Board Order at 1; cf. Marshall, 160 Wn.2d at 346-47 (prior disciplinary action for making misrepresentation in the course of Association's investigation).

ARGUMENT

When the Board enters a decision recommending disbarment, disciplinary counsel must file a petition for the respondent's suspension during the remainder of the proceedings. ELC 7.2(a)(2).⁴ The respondent *must* be suspended absent an affirmative showing by the respondent that

⁴ The rule provides that a petition need not be filed if the Board's decision is not appealed, but it does not provide an exception for a lawyer such as Respondent who is currently suspended. Respondent could be eligible for reinstatement as early as November 10, 2008.

his continued practice of law will not be detrimental to the integrity and standing of the bar and the administration of justice, or contrary to the public interest. Id.

The rule creates a presumption that when the Board recommends disbarment, the respondent's continued practice of law *will be* detrimental to the integrity and standing of the bar and the administration of justice, and contrary to the public interest. That presumption should be even stronger where, as here, the Board's decision is unanimous and the respondent has been subject to prior disciplinary action on three separate occasions for similar misconduct. Allowing such a lawyer to continue business as usual must necessarily be detrimental to the integrity and standing of the bar and the administration of justice and contrary to the public interest.⁵

CONCLUSION

Under ELC 7.2(a)(2), the Association asks the Court to issue an Order requiring that Respondent appear before this Court on a date certain to show cause why this petition should not be granted. The Association

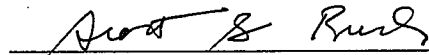
⁵ Furthermore, any claim that Respondent should be allowed to continue practicing law under the supervision of another lawyer "must be viewed with skepticism." Marshall, 160 Wn.2d at 348 n.12. There is no practical and effective means of supervising a lawyer who has repeatedly shown himself to be dishonest and deceitful.

further requests that the Court issue an order suspending Respondent from the practice of law during the remainder of these proceedings.

DATED THIS 3rd day of March, 2008.

Respectfully submitted,

WASHINGTON STATE BAR ASSOCIATION



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Disciplinary Counsel
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APPENDIX A

FILED

MAR 29 2007

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re) Public File No. 05#00103
)
BRADLEY R. MARSHALL,) AMENDED FINDINGS OF FACT,
) CONCLUSIONS OF LAW, AND HEARING
Lawyer) OFFICER'S RECOMMENDATION
)
WSBA No. 15830)

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct ("ELC"), a hearing was held before the undersigned Hearing Officer on February 20 through February 27, 2007. Respondent appeared personally and through his attorney Kurt M. Bulmer, and Disciplinary Counsel Christine Gray and Scott Busby appeared for the Association.

FORMAL COMPLAINT

The Respondent was charged by Amended Formal Complaint, dated May 2, 2006, with twelve counts of violation of the Rules of Professional Conduct.

HEARING

At the hearing on February 20-27, 2007, witnesses were sworn and presented testimony, and documents were admitted into evidence. Having considered the evidence and argument of counsel, the Hearing Officer makes the following Findings of Fact, Conclusions of Law, and Recommendation.

AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND HEARING
OFFICER'S RECOMMENDATION
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FINDINGS OF FACT

The following facts were proven by a clear preponderance of the evidence (ELC 10.14(b)) Findings 1-8, 11, 13-20, 22-29, 31, 34, 36-39, 43, 44, 47, 49, 55, 57-65, 68-77, 84-95, 97-100, 103-105, 107, 109-113, 115-119, 121-126, 128, 129, 131, 136, 139, 143-145, 149 were made upon admitted pleadings. (ELC 10.5)

ADMISSION TO PRACTICE

1. Respondent Bradley R. Marshall was admitted to the practice of law in the State of Washington on June 2, 1986.

FINDINGS REGARDING ALL COUNTS

2. In or about October 2000, Respondent agreed to represent Callie Rheubottom and Essie Wormack in bringing a lawsuit against the Prince Hall Grand Chapter Order of the Eastern Star (Grand Chapter).

3. The Grand Chapter is a sister organization to the Prince Hall Grand Lodge of Washington (Grand Lodge), a Masonic organization. Mrs. Rheubottom and Mrs. Wormack were former members of the Grand Chapter.

4. In general, Mrs. Rheubottom and Mrs. Wormack alleged that they had been improperly suspended from the Grand Chapter.

5. On October 4, 2000, Respondent sent written fee agreements to Mrs. Rheubottom and Mrs. Wormack to represent them jointly for a flat "non-refundable fee" of \$15,000. The agreement was "to pursue a claim for breach of contract, tortuous [sic] conduct and related claims" against the Grand Chapter and Patricia Simpson, one of the officers of the Grand Chapter.

1 6. On January 9, 2001, Respondent filed a lawsuit against the Grand Chapter and
2 Patricia Simpson on behalf of Mrs. Rheubottom and Mrs. Wormack: Callie Rheubottom and
3 Essie M. Wormack v. Grand Chapter Order of Eastern Star, et al., No. 01-2-00900-1 SEA,
4 King County Superior Court (the "Rheubottom litigation").
5

6 7. In or about February 2001, Respondent agreed to represent Lorraine Harris,
7 another former member of the Grand Chapter, joining her as a plaintiff in the Rheubottom
8 litigation.
9

10 8. In February 2001, Mrs. Harris paid Respondent \$7,500 as a flat fee for
11 representing her in the Rheubottom litigation.

12 9. Mrs. Wormack objected both orally and in writing to Respondent about
13 Mrs. Harris becoming involved in the Rheubottom litigation.
14

15 10. Respondent knew that Mrs. Wormack objected to having Mrs. Harris brought
16 into the Rheubottom litigation and knew that objection created a conflict of interest that
17 would preclude his continuing to represent both, absent a waiver of the conflict of interest.

18 11. On April 20, 2001, Respondent filed an amended complaint to the Rheubottom
19 litigation, adding Mrs. Harris as a plaintiff.
20

21 12. Respondent claims that the clients worked out the conflict of interest, but he
22 never advised them in writing about the conflict nor did he obtain a written waiver of the
23 conflict of interest.
24

25 13. On May 8, 2001, in the Rheubottom litigation, the Grand Chapter filed an
26 answer, and included counterclaims against all three plaintiffs, and a third-party complaint
27 against Lindia Richard, William Rheubottom, and Bert Harris.

1 14. Lindia Richard was another former member of the Grand Chapter, who had filed
2 a separate lawsuit against the Grand Chapter: Lindia Richard v. Ola Dean Miller, Patricia Y.
3 Simpson, and Prince Hall Grand Chapter, Order of Eastern Star, No. 01-2-04832-1, Pierce
4 County Superior Court (the "Richard litigation").

5
6 15. William Rheubottom, Mrs. Rheubottom's husband, and Bert Harris, Mrs. Harris's
7 husband, were former members of the Grand Lodge, and were among the defendants in a
8 lawsuit brought in April 2000 by the Grand Chapter: Grand Chapter Order of the Eastern
9 Star, et al. v. Callie Rheubottom, et al., No. 00-2-09881-2 SEA, King County Superior Court
10 (the "Grand Chapter litigation").
11

12 16. In general, in the Grand Chapter litigation, the Grand Chapter sought to enjoin
13 the defendants, which included Mrs. Rheubottom and Mrs. Harris, from acting on behalf of
14 Prince Hall. In May 2001, the Grand Chapter added Essie Wormack and Lindia Richard as
15 additional defendants in the Grand Chapter litigation.
16

17 17. In or about May 2001, Respondent agreed to represent Mr. Rheubottom and
18 Mr. Harris in the Rheubottom litigation and the Grand Chapter litigation.

19 18. In or about May 2001, Respondent received a flat fee of \$10,000 for his
20 representation of Mr. Rheubottom.
21

22 19. In or about May 2001, Respondent received a flat fee of \$9,000 for his
23 representation of Mr. Harris.

24 20. On May 29, 2001, on behalf of Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris,
25 Mr. Rheubottom and Mr. Harris, Respondent filed an answer to the counterclaims and third-
26 party complaint in the Rheubottom litigation.
27

1 21(a). At the time Respondent undertook to represent Mrs. Rheubottom and
2 Mrs. Wormack, those two clients were not adverse, and no conflict of interest or potential
3 conflict of interest existed.

4 21(b). When Respondent agreed to take on the representation (defense) of
5 Mr. Rheubottom and Mr. Harris, there was an existing conflict of interest between
6 Mr. Harris, and Mrs. Wormack. Mrs. Wormack's objection to Mrs. Harris being in the lawsuit
7 was compounded by Respondent's undertaking to represent of Mr. Harris.
8

9 21(c). The conflicts issues ranged from how costs of the litigation would be allocated
10 among, now, five clients; how global settlement proposals would be dealt with if one client
11 wanted to settle and others did not; and how the different agendas of Mrs. Harris and
12 Mrs. Wormack would be reconciled.
13

14 21(d). Respondent did not obtain consent in writing from any of his clients
15 concerning the potential for conflict of interest when he undertook to represent Mrs. Harris
16 and later Mr. Harris.
17

18 22. On July 13, 2001, the Rheubottom litigation and the Grand Chapter litigation
19 were consolidated.
20

21 23. As of December 2001, all three lawsuits – the Richard litigation, the Rheubottom
22 litigation and the Grand Chapter litigation -- were consolidated.

23 24. The following year, in April 2002, on behalf of Mrs. Rheubottom, Mrs. Wormack
24 and Mrs. Harris, Respondent negotiated and accepted a settlement agreement as to the
25 two individual defendants named in the consolidated litigations. The settlement agreement
26 did not include the third defendant, the Grand Chapter.
27

1 25. Under the terms of the settlement, Mrs. Rheubottom, Mrs. Wormack and Mrs.
2 Harris were to be paid \$12,500 each by the individual defendants' insurers.

3 26. Mrs. Richard was represented by another lawyer in April 2002. Mrs. Richard's
4 lawyer negotiated a similar settlement on behalf of Mrs. Richard.

5 27. In later May 2002, Respondent received the settlement checks for Mrs.
6 Rheubottom, Mrs. Wormack and Mrs. Harris.

7 28. In early June 2002, Respondent agreed to represent Mrs. Richard in her
8 litigation with the Grand Chapter.

9 29. Respondent and Mrs. Richard entered into a written fee agreement dated June
10 6, 2002, and signed by Mrs. Richard on June 11, 2002. The fee agreement provides for an
11 hourly fee of \$175.

12 30(a). Both before and after agreeing to represent Mrs. Richard, Respondent did not
13 explain to Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris, Mr. Rheubottom, Mr. Harris and
14 Mrs. Richard the implications of adding Mrs. Richard to the case and the risks involved in
15 common representation.

16 30(b). The risks of adding Mrs. Richard to the litigation included how the costs were
17 going to be divided among, now, six clients; how the hours that Respondent would spend
18 on the case would be allocated between five clients who were on a flat fee agreement and
19 one client who was on an hourly fee agreement; and how global settlement proposals would
20 be dealt with if one client wished to settle when others did not.

21 31(a). In or about early June 2002, after he had received the settlement funds on
22 behalf of Mrs. Rheubottom, Mrs. Wormack and Mrs. Harris, Respondent informed each of
23
24
25
26
27

1 them that they would have to pay him additional fees if they wanted to continue to pursue
2 their claims against the Grand Chapter.

3 31(b). Paragraph 31a above was admitted in the pleadings. At the hearing,
4 Respondent testified that it was not additional fees that he was demanding, but rather an
5 additional deposit against costs. After considering the documentary evidence, and the
6 testimony received at the hearing, I find that the Respondent was not credible that he was
7 demanding only an additional deposit against costs. He was asking for additional attorney
8 fees.
9

10
11 32. Mrs. Wormack and Mrs. Harris refused to pay additional fees.

12 33. After Mrs. Wormack and Mrs. Harris refused to pay any additional fees, there
13 was no effective communication between Respondent and Mrs. Wormack and Mrs. Harris.
14 Respondent did not file a notice of withdrawal, and while still attorney of record did not do
15 anything to effectively represent Mrs. Wormack and Mrs. Harris after the settlement
16 conference of June 3, 2003. On the first morning of trial, when confronted with a defense
17 motion to dismiss with prejudice for failure to participate in pretrial procedures, Respondent,
18 at the suggestion of the trial judge, attempted to preserve the claims of Mrs. Wormack and
19 Mrs. Harris by taking a voluntary non-suit.
20
21

22 34. Mr. and Mrs. Rheubottom paid Respondent \$15,000 in additional fees for his
23 continued representation.

24 35. After June 10, 2002, the Grand Chapter was attempting to resolve the matter,
25 offering to dismiss its claims against Respondent's clients in return for a dismissal of
26 Respondent's clients' claims with prejudice, or in the alternative it would dismiss its claims
27

1 without prejudice as to clients who would not make a reciprocal dismissal.

2 36. The Grand Chapter nonsuited its claims in September 2002.

3 37. On January 17, 2003, Respondent wrote to Mrs. Harris. In that letter,
4 Respondent reminded her that she remained a plaintiff in the Rheubottom litigation and
5 inquired whether she was interested in pursuing her claims at trial.
6

7 38. Mrs. Harris responded by letter dated January 20, 2003, indicating that she was
8 "still interested in this case to the same extent that I shared with you in previous
9 conversations," but further indicating that her "husband's health will not allow me to make
10 any effort to pay additional funds to you."
11

12 39. On January 21, 2003, in response to Mrs. Harris's letter, Respondent wrote, "In
13 order for me to proceed to trial on your behalf, you will need to forward a check to me in the
14 amount of \$15,000.00 by Thursday, January 23, 2003."
15

16 40(a). By means of his January 21, 2003 letter, Respondent was demanding that
17 Mrs. Wormack and Mrs. Harris pay him additional attorney fees in order for him to continue
18 to them in the Rheubottom litigation. Respondent was not credible in his statement that the
19 additional \$15,000 payments were an advance against costs. Respondent did not have a
20 realistic expectation that costs would exceed \$36,000, and further did not tell Mrs. Harris
21 and Mrs. Wormack that any funds received would be deposited in trust and returned to
22 them if costs did not run that high.
23

24 40(b). Respondent's costs after January 21, 2003 through the completion of trial
25 totaled \$53.92. Respondent was not credible that there were extensive other costs that
26 were not recorded by his firm or billed to his clients even though incurred and paid.
27

1 41. As of January 21, 2003, Respondent knew that all affirmative claims of the
2 Grand Chapter against Mrs. Harris had been nonsuited.

3 42. As of June 5, 2002, Respondent knew that he had incurred \$14,523.10 in
4 costs in the Rheubottom litigation, that between June 5, 2002 and January 21, 2003 he had
5 incurred approximately \$4,300 in costs, and that he was likely to incur less than \$500 in
6 additional costs regarding the Rheubottom litigation. In fact, after January 21, 2003, he
7 incurred only \$53.92 in costs.
8

9 43. Mrs. Harris did not pay Respondent any additional fees.
10

11 44. In March 2003, Respondent represented Mrs. Rheubottom and Mrs. Richard at
12 the trial in the Rheubottom lawsuit. The jury awarded \$3,500 each to Mrs. Rheubottom and
13 Mrs. Richard.
14

15 45. [Left blank.]

16 46. [Left blank.]

17 **ADDITIONAL FINDINGS REGARDING COUNT 3**

18 47. During the course of the disciplinary investigation regarding his representation
19 of Mrs. Rheubottom, Mrs. Wormack and Mrs. Harris, Respondent testified at a May 2004
20 deposition.
21

22 48. At his May 2004 deposition, Respondent testified that he entered into the
23 Rheubottom second fee agreement, dated June 10, 2002, for the defense of the Prince Hall
24 Grand Chapter against the Rheubottoms. At hearing, he expanded that to include
25 defending them in the administrative proceeding pending against Mr. Rheubottom and to
26 cap their fees and costs for the conclusion of the litigation.
27

1 49. During his May 2004 deposition, Respondent testified:

2 Q. How did you come to enter into this agreement, dated
3 June 10th, 2002 [fee agreement with Callie and William
4 Rheubottom]?

5 A. The defendant, the Prince Hall Grand Chapter, had
6 brought a counterclaim against the Rheubottoms, and the
7 Rheubottoms asked me to defend them on that action. And that
8 was the reason for the additional retainer.

9 50. The original fee agreement signed by Mrs. Rheubottom (Exhibit 3) provided
10 for a flat fee unless the lawyer and the clients "otherwise agreed." The June 10, 2002
11 second fee agreement was an amendment to the original flat fee agreement signed by
12 Mrs. Rheubottom that covered the additional responsibilities Respondent was undertaking
13 in defending Mr. and Mrs. Rheubottom.

14 51. During his May 2004 deposition, Respondent testified:

15 Q. And what did you tell them [Mrs. Rheubottom, Mrs.
16 Wormack and Mrs. Harris] it would cost them in terms of your
17 fees if they continued to pursue those claims against the Prince
18 Hall Chapter?

19 A. There would be no additional fees. There would be
20 additional costs, and the costs were going to be significant and
21 substantial. Depositions had to be transcribed. Trial preparation
22 had to go forward in terms of exhibits and getting witnesses to
23 testify, and those costs were going to probably exceed the cost
24 of the settlement amounts that they received. And so we ended
25 up going into mediation with Judge Heavey to try [to settle the]
26 case.

27 52. In fact, contrary to his testimony set forth in the preceding paragraph,
Respondent told Mrs. Wormack and Mrs. Harris they would have to pay additional fees for
continuing his representation of them in the Rheubottom litigation.

1 53. During his May 2004 deposition, Respondent knowingly attempted to mislead
2 the Office of Disciplinary Counsel ("ODC") into believing that he did not charge or attempt to
3 charge Mrs. Wormack or Mrs. Harris with any additional fees for his continued
4 representation of them and pursuing their affirmative claims in the Rheubottom litigation,
5 attempting to characterize the request for funds as advanced deposits against costs.
6

7 54. [Left blank.]

8 **ADDITIONAL FINDINGS REGARDING COUNTS 4 THROUGH 7**

9 55. On or about June 13, 2002, Mrs. Richard paid Respondent \$1,000.
10

11 56. All or a part of the \$1,000 was an advance fee deposit.

12 57. Respondent's office did not deposit the \$1,000, or any portion thereof, to his
13 client trust account.

14 58. On or about June 13, 2002, Respondent issued an invoice to Mrs. Richard for
15 \$900 in legal services, and reflecting payment of \$900, with a balance due of zero. That
16 invoice did not reflect receipt of the remaining \$100 that Mrs. Richard had paid to
17 Respondent.
18

19 59. Respondent next issued an invoice to Mrs. Richard dated July 1, 2002 for
20 \$23.84 in costs, and reflecting a balance due of \$23.84. That invoice did not reflect receipt
21 of the additional \$100 paid to Respondent on June 13, 2002, and not previously accounted
22 for.
23

24 60. Respondent next issued an invoice to Mrs. Richard dated October 1, 2002 for
25 \$616.82, most of which was for legal services, and reflecting a balance due of \$616.82.
26 That invoice did not reflect receipt of the additional \$100 paid to Respondent on June 13,
27

1 2002, and not previously accounted for.

2 61. On November 1, 2002, Respondent issued an invoice to Mrs. Richard
3 reflecting a total amount due of \$556.55. This invoice included new costs of \$15.89,
4 summarized previous invoices and, for the first time, credited Mrs. Richard for the additional
5 \$100 paid to Respondent in June 2002.
6

7 62. On November 26, 2002, Mrs. Richard paid the \$556.55.

8 63. On December 20, 2002, Respondent issued an invoice to Mrs. Richard for
9 \$1,335.44.
10

11 64. On January 16, 2003, Mrs. Richard paid \$1,350 to the Marshall firm.

12 65. On January 16, 2003, Mrs. Richard and her husband, James Richard, met
13 with Respondent and discussed his legal fees.

14 66. At the January 16, 2003 meeting, Respondent agreed to complete the
15 representation of Mrs. Richard for a flat fee of an additional \$5,000, and agreed to prepare
16 an amended fee agreement when the \$5,000 was received.
17

18 67. Respondent received the \$5,000 and never prepared an amended fee
19 agreement.
20

21 68. As of January 16, 2003, Mrs. Richard had paid in full all invoices from
22 Respondent.

23 69. On January 27, 2003, Mrs. Richard sent a \$5,000 cashier's check to
24 Respondent's office. Along with the \$5,000 payment, Mrs. Richard included a handwritten
25 note that indicates: "Cashier's check of \$5,000.00 for Retainer completing the PHGC case.
26 Per your agreement on 1/16/03. Thank you for your attention."
27

1 70. On February 3, 2003, Respondent's office deposited Mrs. Richard's payment
2 of \$5,000 to Respondent's client trust account on February 3, 2003.

3 71. After a March 2003 trial, in which a jury awarded \$3,500 to Mrs. Richard and
4 \$3,500 to Mrs. Rheubottom, Respondent sent Mrs. Richard an invoice dated April 1, 2003,
5 charging her \$21,787.50 for professional legal services between March 10, 2003 and March
6 29, 2003.

7
8 72. Upon receiving the April 1, 2003 invoice, Mrs. Richard spoke to her previous
9 lawyer, Edward M. Lane, about the bill. On April 24, 2003, Mr. Lane wrote Respondent a
10 letter on Mrs. Richard's behalf, challenging Respondent's April 1, 2003 invoice, and setting
11 forth Mrs. Richard's position that the \$5,000 payment in January constituted full payment of
12 Respondent's legal fees.

13
14 73. Respondent replied by letter dated April 28, 2003, asserting his position that
15 the \$5,000 was an advance fee deposit for services to be provided at a rate of \$175 per
16 hour.

17
18 74. On April 30, 2003, Respondent filed an attorney's lien for \$21,787.50 in the
19 Rheubottom litigation case in King County Superior Court.

20
21 75. On or about May 2, 2003, Respondent filed a lawsuit against Mrs. Richard for
22 \$21,787.50 in fees.

23 76. On May 30, 2003, Respondent's office removed Mrs. Richard's payment of
24 \$5,000 from his trust account.

25
26 77. In or about August 2004, Respondent dropped his lawsuit against Mrs.
27 Richard.

1 78. [Left blank.]

2 79. [Left blank.]

3 80. [Left blank.]

4 81. [Left blank.]

5
6 **ADDITIONAL FINDINGS REGARDING COUNT 8**

7 82. Based upon their fee agreements with Respondent, each of which provided
8 for payment of a flat fee for representation, Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris,
9 Mr. Rheubottom and/or Mr. Harris reasonably believed that the flat fees would cover all
10 work to be performed on their behalf that fell within the expertise and/or ability of
11 Respondent and/or his employees.
12

13 83. Mrs. Rheubottom, Mrs. Wormack, Mrs. Harris, Mr. Rheubottom and/or Mr.
14 Harris never agreed in writing that Respondent could charge them for costs incurred by
15 Respondent in hiring contract employees to perform legal, paralegal, or administrative work.
16

17 84. By invoices dated March 1, 2002, Respondent's law firm billed the
18 Rheubottoms and the Harrises for costs of \$33.33 each for "1/3 of 5 hours Interrogatories &
19 requests."
20

21 85. By invoices dated April 1, 2002, the Respondent's law firm billed the
22 Rheubottoms, the Harrises and Mrs. Wormack for costs of \$33.33 each for "5 hrs research
23 – Motion for Summary Judgement [sic]." In addition, the Respondent's law firm billed the
24 Rheubottoms, the Harrises and Mrs. Wormack for costs of \$93.34 or \$93.33 each for
25 "Motion for Summary Judgement [sic]."
26

27 86. On the June 1, 2002 invoices to the Rheubottoms, Mrs. Wormack and the

1 Harrises, the Respondent's law firm charged each of them \$35.33 for "Rheubottom
2 deposition attendance; research Masonic law."

3 87. On the June 1, 2002 invoices to the Rheubottoms, Mrs. Wormack and the
4 Harrises, the Respondent's law firm also charged each of them \$329.16 or \$329.17 for
5 "research, review, drafting."
6

7 88. By letter to Respondent dated June 25, 2002, Mrs. Wormack questioned
8 certain items on her bills. In that letter, she challenged Respondent's charges for a
9 "researcher," indicating that "[d]uring the litigation you never discussed hiring this person at
10 our expense."
11

12 89. On the July 1, 2002 invoices to the Rheubottoms and Mrs. Wormack, the
13 Respondent's law firm charged them a total of \$1,050.00 for "Legal work Rheubottom v.
14 Prince Hall 6/7-6/10."
15

16 90. By letter to Respondent dated July 23, 2002, Mrs. Harris objected to items
17 related to her bills. Among other things, she stated:

18 You hired other persons to serve you and charged each one of
19 the three Essie, Callie & Lorraine. You did not get my
20 permission to place these charges to me.

21 91. On the October 1, 2002 invoice to the Rheubottoms, the Respondent's law
22 firm charged \$50 for "professional legal services: review new CR 56 motion."
23

24 92. On the October 16, 2002 invoice to the Rheubottoms, the Respondent's law
25 firm charged \$1,800 for "Review Prince Hall Supplemental CR 56 Motion, start research,
26 research case law, draft memo response."
27

93. Each of the cost items described in the preceding paragraphs, ¶¶84 to 92,

1 related to work performed by a contract employee of Respondent's law firm.

2 94. Each of the cost items described in the preceding paragraphs, ¶¶84 to 92,
3 related to work that Respondent and/or his employees had the ability and/or expertise to
4 perform.

5 95. In 2002, Respondent received payment for each of the cost items described in
6 the preceding paragraphs, ¶¶84 to 92.

7 96. [Left blank.]

8
9 **ADDITIONAL FINDINGS REGARDING COUNT 9**

10 97. On May 20, 2003, Mrs. Richard filed a grievance against Respondent, WSBA
11 File No. 03-00826.

12 98. By letter dated June 4, 2003, ODC requested a response to Mrs. Richard's
13 grievance. By letter dated June 16, 2003, Respondent provided a response.

14 99. By letter dated July 24, 2003, ODC requested additional information from
15 Respondent regarding Mrs. Richard's grievance. Shortly thereafter, by telephone,
16 Respondent requested additional time within which to respond to the July 24, 2003 letter.
17 ODC extended Respondent's deadline to September 8, 2003. Subsequently, Respondent
18 requested deferral of the investigation.

19 100. After the deferral issue had been resolved, by letter dated October 14, 2003,
20 ODC repeated its request for additional information that had initially been made on July 24,
21 2003.

22 101. On October 15, 2003, Respondent left a voicemail message for Disciplinary
23 Counsel, but did not request any extension of time.
24
25
26
27

1 102. Within the time frame set forth in the October 14, 2003 letter, Respondent
2 failed to respond to ODC's July 24, 2003 request, and did not request any extension of time
3 within which to respond.

4 103. By letter dated October 30, 2003, ODC notified Respondent that his failure to
5 provide the requested information within ten days would result in the issuance of a
6 subpoena.
7

8 104. By letter dated November 5, 2003, Respondent requested an additional ten
9 days to file his response and notified ODC that Kurt M. Bulmer would be representing him
10 regarding Mrs. Richard's grievance.
11

12 105. On November 11, 2003, Mr. Bulmer confirmed that he was representing
13 Respondent.

14 106. Within the time frame established by Respondent's extension request of
15 November 5, 2003, Respondent failed to respond to ODC's July 24, 2003 request. Neither
16 Respondent nor his counsel requested any additional extension of time within which to
17 respond.
18

19 107. On November 24, 2003, ODC issued a subpoena duces tecum and mailed a
20 copy to Mr. Bulmer. On December 1, 2003, Mr. Bulmer agreed to accept service by mail on
21 behalf of Respondent.
22

23 108. On December 18, 2003, Respondent, through his counsel, responded for the
24 first time to some of the requests for information made in ODC's July 24, 2003 letter.
25 Respondent did not provide any of the requested documents until December 19, 2003.
26

27 109. By letter dated December 23, 2003, ODC informed Respondent that it had

opened a grievance (WSBA File No. 03-03047) against him and requested a written response to a number of questions and the production of various financial records.

110. Within the time frame set forth in the December 23, 2003 letter, Respondent failed to provide any response to the Association and failed to request any extension of time for providing a response.

111. By letter dated January 27, 2004, addressed to Mr. Bulmer, ODC notified Respondent that his failure to provide the requested information within ten days would result in the issuance of a subpoena.

112. Within the time frame set forth in the January 27, 2004 letter, Respondent failed to provide any response with the Association and failed to request any extension of time for providing a response.

113. On February 11, 2004, ODC issued a subpoena duces tecum to Respondent, and mailed a copy to Mr. Bulmer.

114. On February 19 or 20, 2004, Respondent delivered three boxes of documents to the Association, which contained some, but not all, of the documents responsive to the Association's December 23, 2003 request. At that time, Respondent did not provide any written response to the questions posed in ODC's letter of December 23, 2003.

115. On February 23, 2004, Mr. Bulmer accepted service of the subpoena on Respondent's behalf.

116. On May 20, 2004, ODC deposed Respondent regarding this matter.

117. At the May 20, 2004 deposition, the Association requested that Respondent follow up by providing certain information and documents, which he agreed to do by June 2,

1 2004.

2 118. By letter from Mr. Bulmer dated June 3, 2004, Respondent provided some, but
3 not all, of that follow-up information.

4 119. By letter to Mr. Bulmer dated July 7, 2004, ODC reminded Respondent of the
5 outstanding requests from the deposition, and indicated that if he did not comply by July 21,
6 2004, that it would issue a subpoena.

7 120. Within the time frame set forth in the July 7, 2004 letter, Respondent failed to
8 provide the requested information to the Association and failed to request any extension of
9 time for providing a response.

10 121. On July 27, 2004, ODC issued a subpoena duces tecum.

11 122. By letter from Mr. Bulmer dated August 5, 2004, Mr. Bulmer provided the
12 additional information. As a result, ODC cancelled the scheduled deposition.

13 123. On March 1, 2005, ODC sent an additional request for response to
14 Respondent, through Mr. Bulmer, on March 1, 2005.

15 124. On March 23, 2005, Mr. Bulmer requested a ten-day extension of time for
16 responding to the March 1, 2005 request, which ODC granted.

17 125. Within the time frame established by Mr. Bulmer's March 23, 2005 request,
18 Respondent failed to provide the requested information to the Association and failed to
19 request any additional extension of time for providing a response.

20 126. By letter to Mr. Bulmer dated April 18, 2005, ODC notified Respondent that his
21 failure to provide the requested information within ten days would result in the issuance of a
22 subpoena.

1 127. Within the time frame set forth in the April 18, 2005 letter, Respondent failed to
2 provide any response with the Association and failed to request any extension of time for
3 providing a response.

4 128. On May 3, 2005, ODC issued a subpoena duces tecum to Respondent, and
5 mailed a copy to Mr. Bulmer.
6

7 129. By letter from Mr. Bulmer dated May 11, 2005, Respondent responded to
8 ODC's March 1, 2005 request for information. As a result, ODC cancelled the scheduled
9 deposition.
10

11 130. [Left blank.]

12 **ADDITIONAL FINDINGS REGARDING COUNTS 10 THROUGH 12**

13 131. On June 3, 2002, at a mediation proceeding before the Honorable Michael
14 Heavey, the Grand Chapter attempted to reach a settlement resolving all pending claims in
15 the consolidated litigation.
16

17 132. As a result of the June 3, 2002 mediation, counsel for the Grand Chapter,
18 Respondent, the mediation judge, and some, if not all the clients, thought a settlement
19 agreement had been reached. No written settlement agreement was signed by any of the
20 clients, no written stipulation was entered into in open court by any of the attorneys, and
21 shortly after the mediation, all clients confirmed to Respondent that they had not agreed to a
22 settlement.
23

24 133. By letter dated June 17, 2002, addressed to Mrs. Wormack, Mrs. Harris,
25 Mrs. Rheubottom and Mrs. Richard, Respondent stated:
26

27 The court has directed Ms. Wormack and Ms. Harris sign the

1 release and settlement agreement and the Chapter to do the
2 same in order to consummate this matter.

3 134. In fact, the court had not directed Mrs. Wormack or Mrs. Harris to sign a
4 release and settlement agreement.

5 135. Respondent intentionally and knowingly made the misrepresentation
6 contained in the June 17, 2002 letter.

7 136. With Mrs. Wormack's copy of the June 17, 2002 letter, Respondent enclosed
8 the release documents for Mrs. Wormack to sign and then forward to Mr. and Mrs. Harris.

9 137. Mrs. Wormack did not sign the documents that purported to carry into effect
10 the undocumented settlement reached at the June 3, 2002 mediation.

11 138. By letter to Respondent dated June 25, 2002, Mrs. Wormack indicated that
12 she had not agreed to settle her case against the Grand Chapter. She further stated:

13 I do not have any documents in my possession where the court
14 has directed me and Ms. Harris to signa [sic] release and
15 settlement agreement[.] I feel that you are threatening Ms.
16 Harris and I [sic], but I will have my day in court.

17 139. By letter dated July 8, 2002, Respondent sent the settlement agreement to Mr.
18 and Mrs. Harris and requested that they sign and return the document as soon as possible.

19 140. Mr. and Mrs. Harris did not sign the document.

20 141. By letter to the Harrises dated July 15, 2002, Respondent stated:

21 On July 8, 2002, I forwarded the original Settlement Agreement
22 in the above-referenced matter to you for you to sign and return
23 to me. As of this date I have not received the original back. It is
24 imperative that you contact me as soon as possible and let me
25 know if you plan to participate in the settlement of this case or if
26 you wish to proceed to trial.

1 142. By letter dated July 23, 2002, Mrs. Harris informed Respondent:

2 Both you and Judge Heavey heard something during the
3 mediation meeting that I did not hear. I don't understand how
4 you arrived at this. You directed me to sign a settlement which I
5 totally disagree with. Who told you that Essie and Lorraine will
6 not be reinstated into the Eastern Star. Your next sentence
7 seemed to be a clear threat. Since we seemed to have been in
8 the same Hearing Room with Judge Heavey, Mr. & Mrs.
9 Rheubottom, Linda [sic] Richard, Essie Wormack and Lorraine
10 B. Harris, how could you demand my signature on a document
11 which is not truthful. I totally disagree with you [sic] hearing and
12 finalization of this case.

13 143. By letter dated July 31, 2002 to the Harrises and Mrs. Wormack, Respondent
14 stated, "It is my understanding that you each have settled your case."

15 144. Respondent sent opposing counsel a copy of his July 31, 2002 letter to the
16 Harrises and Mrs. Wormack.

17 145. In his July 31, 2002 letter to the Harrises and Mrs. Wormack, Respondent also
18 stated:

19 Despite your reluctance to sign the Settlement Agreement, your
20 claims have been dismissed and will not be heard at trial.

21 146. In fact, as of July 31, 2002, Mrs. Wormack's and the Harrises' claims against
22 the Grand Chapter had not been dismissed.

23 147. Respondent intentionally and knowingly made the misrepresentation
24 contained in the July 31, 2002 letter.

25 148. In early August 2002, in a telephone conversation, Respondent and Terry E.
26 Thomson, counsel for the Grand Chapter, discussed the status of the case. The
27 Association has not borne the burden of proof that Respondent "suggested" that a motion to

1 compel be filed.

2 149. On or about August 14, 2002, the Grand Chapter filed a motion to compel
3 Mrs. Wormack and the Harrises to execute a settlement agreement between the Grand
4 Chapter and Mrs. Wormack and the Harrises.

5 150 Respondent did not oppose the motion.

6 151. As of the beginning of July 2002, Respondent knew that Mrs. Wormack
7 refused to pay additional fees for his continued representation of her in the consolidated
8 litigation against the Grand Chapter and that Mrs. Wormack did not agree to settle her
9 claims against the Grand Chapter.
10
11

12 152. Respondent never disclosed to Mrs. Wormack, given his demand for
13 additional funds, that his continued representation of her may be materially limited by his
14 own interest in not having to disburse to her the \$12,500 in settlement funds in his trust
15 account, but rather have Mrs. Wormack authorize him to change his fee agreement in view
16 of the receipt of those funds. Mrs. Wormack never consented in writing to such a limitation.
17

18 153. By the end of July 2002, Respondent knew that Mrs. Harris refused to pay
19 additional fees for his continued representation of her in the consolidated litigation against
20 the Grand Chapter and that Mrs. Harris did not agree to settle her claims against the Grand
21 Chapter.
22

23 154. Respondent never disclosed to Mrs. Harris, given his demand for additional
24 funds, that his continued representation of her may be materially limited by his own interest
25 in not having to disburse to her the \$12,500 in settlement funds in his trust account, but
26 rather have Mrs. Harris authorize him to change his fee agreement in view of the receipt of
27

1 those funds. Mrs. Harris never consented in writing to such a limitation.

2 155. [Left blank.]

3 156. [Left blank.]

4 157. [Left blank.]

5
6 **ADDITIONAL FINDINGS OF FACT RE AGGRAVATING**
7 **AND MITIGATING FACTORS**

8 158. Respondent has been the subject of two prior disciplinary offenses: (a) a May
9 1989 admonition for failure to put funds in a trust account and lack of response to a WSBA
10 request for information (Exhibit 153); (b) a July 17, 1998 reprimand for filing declarations in
11 an action, knowing that the signatures were not authentic. (Exhibit 152)

12
13 159. The Hearing Officer did not admit or consider discipline that is pending in front
14 of the Washington State Supreme Court, but did allow to be marked Exhibit 150 as an offer
15 of proof and Respondent's counteroffer of proof (Exhibit 450).

16
17 160. Respondent had a selfish motive in demanding additional fees from
18 Mrs. Wormack and Mrs. Harris and in adding clients to the litigation without obtaining written
19 consents.

20
21 161. The failure to place funds in trust and the lack of response to WSBA requests
22 for information reflect a pattern of misconduct with Count 4, Count 6, and Count 9.

23 162. The aggravating factor of bad faith obstruction does not apply.

24 163. Respondent's attempt during deposition and elsewhere during the conduct of
25 these disciplinary proceedings to characterize the requests for additional fees as costs was
26 a deceptive practice in the course of the disciplinary process.
27

1 164. Respondent has refused to acknowledge the wrongful nature of his conduct in
2 requesting the fees, and not obtaining conflict of interest waivers.

3 165. While all the clients in this matter were elderly, they were not vulnerable.

4 166. Respondent has substantial experience in the practice of law, having been
5 admitted and practiced continuously since 1986.

6 167. A prior hearing officer in this matter was appointed December 12, 2005, and
7 considered Respondent's motion for a continuance on May 5, 2006 by telephone
8 conference call. The motion had been filed on May 4, 2006. On May 15, 2006, the prior
9 hearing officer entered an order granting the continuance and setting a new date for
10 hearing. On June 2, 2006, the prior hearing officer entered an order revising prehearing
11 deadlines. On June 22, 2006, the prior hearing officer received a joint letter by
12 Respondent's counsel and ODC counsel requesting recusal. On June 26, 2006, the prior
13 hearing officer recused herself.

14 168. The prior hearing officer had written the WSBA on January 14, 2005
15 concerning a disciplinary counsel position. The prior hearing officer again wrote May 26,
16 2006 re a disciplinary counsel position. On June 2, 2006, the Association wrote to the prior
17 hearing officer concerning her application for a disciplinary counsel position. On June 8,
18 2006, Randy Beitel emailed Cindy Jacques concerning a disciplinary counsel interview with
19 the prior hearing officer. During the time that the prior hearing officer was seeking a
20 position as disciplinary counsel with the ODC, she did not disclose to Respondent that she
21 was applying for that position. That pending employment application formed the basis of
22 the June 22, 2006 joint letter requesting that the prior hearing officer recuse herself.
23
24
25
26
27

1 169. In June 2006, the Respondent had not filed any trial exhibits, and by July 19,
2 2006, Respondent had not filed any hearing brief.

3 170. The application for employment with ODC is a matter that should have been
4 disclosed to Respondent's counsel, but the failure to disclose and the ultimate recusal on
5 June 26, 2006 did not result in delay in the disciplinary proceedings.
6

7 171. The only mitigating factor is that the admonition was in 1989.

8 172. Respondent's request for additional fees from Mrs. Harris and Mrs. Wormack,
9 and then failing to follow through on his representation of them caused both potential
10 serious injury and actual serious injury to Mrs. Wormack and Mrs. Harris. The potential
11 serious injury was the loss of their legal claim. The actual serious injury was the loss of the
12 fees they had paid up to that point. (This finding applies to Counts 1, 4, and 8.)
13

14 173. The conduct of taking multiple clients without written conflict waivers caused
15 actual serious injury to both Mrs. Wormack and Mrs. Harris, in that it resulted in the loss of
16 the fees they spent having Respondent represent them without written consent.
17 Respondent's conduct in misrepresenting to Mrs. Wormack and Mrs. Harris of the status of
18 their case and directing them to sign settlement documents created potential serious injury
19 in that it would have resulted in the dismissal of cases contrary to their clearly stated wishes
20 not to have the cases dismissed. (This finding applies to Counts 2 and 12.)
21

22 174. In providing misleading statements in his investigative deposition, Respondent
23 caused injury or potential injury to his clients, the public, and the legal system when he
24 attempted to characterize his request for fees as a request for advanced costs. (This
25 finding applies to Count 3.)
26
27

1 175. Respondent's conduct in failing to deposit the \$100 received from Mrs.
2 Richard in trust and to account for it properly for approximately 90 days, was a bookkeeping
3 problem in his office, which he knew or should have known and negligently failed to
4 supervise. (This finding applies to Counts 5, 6, and 7.)

5
6 176. In failing to timely reply to requests for information from the ODC, Respondent
7 negligently failed to respond in a timely fashion, and caused injury or potential injury to his
8 clients, the public, and the legal system. (This finding applies to Count 9.)

9
10 177. Respondent's conduct, in writing Mrs. Wormack and Mrs. Harris and
11 misrepresenting that a judge had ordered them to sign the stipulation and order of
12 dismissal, and later telling them that their case had been dismissed, was done with
13 knowledge of the true circumstances. Respondent was intending to benefit himself by
14 getting the clients' cases out of his office, contrary to their wishes, and he caused serious
15 harm to his clients. (This finding applies to County 10.)

16
17 178. By failing to listen to and follow the decisions of Mrs. Wormack and Mrs. Harris
18 not to settle their claims, and by misrepresenting the status of their cases, Respondent
19 acted knowingly and caused serious injury to his clients. (This finding applies to Count 11.)

20
21 179. By continuing to attempt to finalize a settlement that had been rejected by
22 Mrs. Wormack and the Harrises, Respondent acted knowingly and caused serious or
23 potentially serious injury to his client. (This finding applies to County 12.)

24 **ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW RE DEFENSES**

25
26 180. (Respondent's Answer ¶167) Respondent presented no evidence or legal
27 authority that the proceedings resulted in denial of due process fundamental fairness, or

1 violation of equal protection. The Hearing Officer finds that there was no denial of due
2 process or fundamental fairness, or violation of equal protection and concludes that ¶167
3 should be dismissed.

4
5 181. (Respondent's Answer ¶168) Respondent presented no evidence or legal
6 authority that the structure of the disciplinary system as it relates to economic
7 circumstances and costs is an unconstitutional denial of equal protection and due process.
8 The Hearing Officer finds that there was no such denial of equal protection and due process
9 and concludes that ¶168 should be dismissed.

10
11 182. (Respondent's Answer ¶169) Respondent presented no evidence or legal
12 authority to support the claim that these hearings were an impermissible delegation of
13 authority by the Supreme Court to a private organization, and the Hearing Officer finds there
14 was no impermissible delegation and concludes that ¶169 should be dismissed.

15
16 183. (Respondent's Answer ¶170) Respondent presented no evidence or legal
17 authority to support the claim that he had been denied an adequate opportunity to prepare a
18 response to the Amended Formal Complaint. The Hearing Office finds that Respondent
19 has not been denied an adequate opportunity to prepare a response to the Amended
20 Formal Complaint and concludes that ¶170 should be dismissed.

21 CONCLUSIONS OF LAW, PRESUMPTIVE SANCTIONS

22 AND RECOMMENDATIONS

23 Count 1

24
25 Conclusion. By requesting and/or receiving additional fees from Mrs. Wormack and
26 Mrs. Harris for representation that had already been paid for under a flat fee agreement,
27

1 Respondent violated RPC 1.5(a), RPC 8.4(a), and RPC 8.4(c). Respondent's mental state
2 was not impaired and he acted knowingly. The misconduct caused potential and actual
3 serious injury to Mrs. Wormack and Mrs. Harris.

4
5 Presumptive Sanction. ABA Standard §7.1 provides:

6 Disbarment is generally appropriate when a lawyer knowingly
7 engages in conduct that is a violation of a duty owed as a
8 professional with the intent to obtain a benefit for the lawyer or
9 another, and causes serious or potentially serious injury to a
10 client, the public, or the legal system.

11 Recommendation: Applying the aggravating and mitigating circumstances found
12 above, there is no reason to depart from the standard in §7.1; and disbarment is
13 recommended on Count 1.

14 Count 2

15 Conclusion. By agreeing to represent Mrs. Harris over the objection of
16 Mrs. Wormack, and later agreeing to represent Mr. Harris without obtaining consent in
17 writing from Mrs. Wormack, Mrs. Harris and Mr. Harris, Respondent violated RPC 1.7(b).
18 The allegations as to Mr. and Mrs. Rheubottom and Mrs. Richard are dismissed. The
19 Hearing Officer concludes that RPC 1.7(b) is not a *per se* rule that requires every
20 representation of more than one client in a matter to require written waivers of conflict.
21

22 Respondent knew of the conflict of interest from both oral and written
23 communications from Mrs. Wormack. By failing to get the conflict of interest waiver,
24 Respondent caused injury or potential injury to his clients. Respondent's mental state was
25 not impaired and he acted knowingly.
26

27 Presumptive Sanction. ABA Standards §4.31(b) provides:

1 Disbarment is generally appropriate when a lawyer, without the
2 informed consent of the client(s)...

3 (b) simultaneously represents clients that the lawyer knows have
4 adverse interests with the intent to benefit the lawyer or another,
and causes serious or potentially serious injury to a client.

5 Recommendation: Applying the aggravating and mitigating circumstances found
6 above, there is no reason to depart from the presumptive sanction and disbarment is
7 recommended for Count 2.

8
9 **Count 3**

10 By making a misleading statement in his investigative deposition that he was not
11 requesting attorney fees but only costs from Mrs. Wormack and Mrs. Harris, Respondent
12 violated RPC 8.4(c) and RPC 8.4(d), and RPC 8.4(l). Respondent's mental state was not
13 impaired and he was acting knowingly. Respondent's actions caused injury or potential
14 injury to his clients, the public, and the legal system.

15
16 Presumptive Sanction. ABA Standard §7.2 provides:

17
18 Suspension is generally appropriate when a lawyer knowingly
19 engages in conduct that is a violation of a duty owed as a
20 professional and causes injury or potential injury to a client, the
public, or the legal system.

21 Recommendation. Applying the aggravating and mitigating circumstances, including
22 prior discipline for filing forged declarations, the Hearing Officer has concluded that the
23 recommended sanction should be disbarment for Count 3.

24
25 **Count 4**

26 Conclusion. After agreeing in January 2003 to complete Mrs. Richard's case for a
27 flat fee, then billing her \$21,787.50 in April 2003, filing a lawsuit against her in an attempt to

1 collect the fee, and filing a lien against Mrs. Richard's award in the Rheubottom litigation,
2 Respondent violated RPC 1.5(a). Respondent's mental state was not impaired and he
3 acted knowingly. Respondent's actions caused actual serious injury to Mrs. Richard in
4 having to hire a lawyer to defend herself in the claim.

5
6 Presumptive Sanction. ABA Standard §7.1 provides:

7 Disbarment is generally appropriate when a lawyer knowingly
8 engages in conduct that is a violation of a duty owed as a
9 professional with the intent to obtain a benefit for the lawyer or
10 another, and causes serious or potentially serious injury to a
11 client, the public, or the legal system.

12 Recommendation. Applying the aggravating and mitigating circumstances, the
13 Hearing Officer sees no reason to depart from the presumptive sanction, and recommend
14 disbarment on Count 4.

15 **Count 5**

16 Conclusion. By failing to place into his clients' trust account \$100 of Mrs. Richard's
17 June 2002 payment, Respondent violated RPC 1.14(a). Respondent's mental state was not
18 impaired and he acted negligently in failing to ensure that the client's funds were deposited
19 in trust. The failure to deposit the \$100 caused little or no actual or potential injury to the
20 client, the public or the legal system.

21
22 Presumptive Sanction. ABA Standard §7.4 provides:

23 Admonition is generally appropriate when a lawyer engages in
24 an isolated instance of negligence that is a violation of a duty
25 owed as a professional, and causes little or no actual or potential
26 injury to a client, the public, or the legal system.

27 Recommendation. Applying the aggravating and mitigating circumstances,

1 particularly the fact that that Respondent had been admonished in the past for failing to
2 deposit client funds in trust, it is the Hearing Officer's recommendation that Respondent be
3 reprimanded for his conduct under Count 5.

4 Count 6

5
6 Conclusion. By failing to account properly to Mrs. Richard between June 2002 and
7 October 2002 as to the status of the \$100 paid in June 2002, Respondent violated RPC
8 1.14(b)(3), but the Hearing Officer concludes that this count is subsumed in Count 5, and
9 therefore recommends one reprimand on Count 5 and/or Count 6.

10 Count 7

11
12 Conclusion. Respondent's failure to remove \$5,000 of Mrs. Richard's funds from his
13 clients' trust account as promptly as he was entitled to, does not amount to a violation of the
14 RPCs relating to commingling of funds, and Count 7 should be dismissed.

15 Count 8

16
17 Conclusion. By charging his flat fee clients for work performed by contract
18 employees that would have been expected by his flat fee clients to be part of the legal
19 services provided for the flat fee, Respondent violated RPC 1.5(a). Respondent's mental
20 state was not impaired and he acted knowingly. Respondent caused injury or potential
21 injury to a client. After the WSBA provided the Respondent an analysis letter, he did make
22 restitution to his clients. The Hearing Officer concludes that is not a mitigating factor. ABA
23 Standard §9.4 provides that "forced or compelled restitution" is neither an aggravating or
24 mitigating factor.
25

26
27 Presumptive Sanction. ABA Standard §7.2 provides:

1 Suspension is generally appropriate when a lawyer knowingly
2 engages in conduct that is a violation of a duty owed as a
3 professional and causes injury or potential injury to a client, the
4 public, or the legal system.

5 Recommendation. Applying the aggravating and mitigating circumstances, the
6 Hearing Officer recommends that a period of suspension of one year be the sanction for the
7 violation of Count 8. If the aggravating and mitigating circumstances did not exist, the
8 recommendation would have been six months suspension.

9 **Count 9**

10 Conclusion. By failing to respond in timely fashion to one or more of the WSBA's
11 requests for information regarding the grievances, Respondent violated RPC 8.4(I).
12 Respondent's mental state was not impaired and he acted negligently when he failed to
13 provide the information in a timely fashion. Respondent's conduct caused injury or potential
14 injury to his clients, the public, and the legal system.

15 Presumptive Sanction. ABA Standard §7.3 provides:

16 Reprimand is generally appropriate when a lawyer negligently
17 engages in conduct that is a violation of a duty owed as a
18 professional and causes injury or potential injury to a client, the
19 public, or the legal system.

20 Recommendation. Applying the aggravating and mitigating circumstances,
21 particularly the aggravating circumstance that Respondent had previously been disciplined
22 for failing to provide information in a timely fashion to the Bar Association, the Hearing
23 Officer recommends that the presumptive sanction of reprimand is not appropriate and that
24 the Respondent should be suspended for six months on Count 9.

25 **Count 10**

1 Conclusion. By making one or more misrepresentations in his letters of June 17,
2 2002 and July 31, 2002, Respondent violated RPC 8.4(c). Respondent's mental state was
3 not impaired and he acted knowingly, and his conduct caused potential serious injury and
4 actual serious injury to his clients.

5 Presumptive Sanction. ABA Standard §4.61 provides:

6
7 Disbarment is generally appropriate when a lawyer knowingly
8 deceives a client with the intent to benefit the lawyer or another,
9 and causes serious injury or potential serious injury to a client.

10 Recommendation. Applying the aggravating and mitigating circumstances, the
11 Hearing Officer sees no reason to depart from the presumptive sanction, and recommends
12 that Respondent be disbarred for Count 10.

13 **Count 11**

14 Conclusion. By failing to abide by the decision of Mrs. Wormack and Mrs. Harris to
15 not settle their claims against the Grand Chapter and continuing to attempt to force a
16 settlement contrary to his clients' wishes, Respondent violated RPC 1.2(a). Respondent's
17 mental state was not impaired and he acted knowingly, and caused injury to his clients.

18 Presumptive Sanction. ABA Standard §4.42 provides:

19
20 Suspension is generally appropriate when (a) a lawyer knowingly
21 fails to perform services for a client and causes injury or potential
22 injury to a client.

23 Recommendation. Applying the aggravating and mitigating circumstances, the
24 Hearing Officer recommends that the Respondent be disbarred for the violation of Count 11.

25 **Count 12**

26 Count 12 is subsumed in Counts 10 and 11. Count 12 should be dismissed.
27

ULTIMATE RECOMMENDATION

I have found multiple ethical violations and the ultimate sanction imposed should be at least consistent with the sanction for the most serious instance of misconduct among a number of violations. I therefore recommend that the Respondent be disbarred. I further recommend that Respondent be ordered to pay restitution of \$7,500 to Mrs. Wormack, \$7,500 to Mrs. Harris, and \$4,000 of the restitution for the benefit of Mrs. Wormack should be either paid in a joint check to Mrs. Wormack and Mrs. Rheubottom, or \$4,000 paid to Mrs. Rheubottom and \$3,500 to Mrs. Wormack. I do not recommend any restitution to the Rheubottoms other than as may be derivative of the order of restitution to Mrs. Wormack.

DATED this 29th day of March, 2007.



JAMES M. DANIELSON, WSBA #01629
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the Amended F/E, CL to be delivered to the Office of Disciplinary Counsel and to be mailed to Kurt Bulmer, Respondent/Respondent's Counsel at 740 Belmont Ave #3, Seattle, by Certified/first class mail, postage prepaid on the 29 day of March, 2007.

Becky Leashy
Clerk/Counsel to the Disciplinary Board

AMENDED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND HEARING
OFFICER'S RECOMMENDATION

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Wenatchee, WA 98807-1688
(509) 662-3685 / (509) 662-2452 FAX

APPENDIX B

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FILED

JAN 25 2008

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

BRADLEY R. MARSHALL,
Lawyer (WSBA No. 15830).

Proceeding No. 05#00103

DISCIPLINARY BOARD ORDER
MODIFYING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board at its November 30, 2007 meeting on automatic review of Hearing Officer James Danielson's disbarment recommendation following a hearing.

Having reviewed the documents designated by the parties, the briefs and the applicable case law and rules, and having heard oral argument:

IT IS HEREBY ORDERED THAT the Findings of Fact, Conclusions of Law and Hearing Officer's Recommendation are approved.¹

¹ The vote on this matter was unanimous. Those voting were Andrews, Carlson, Cena, Coppinger, Darst, Fine, Kuznetz, Madden, Meehan, Montez and Urena. Mr. Meyers recused from this matter and did not participate. He was not present during the argument, deliberations or voting.

ORIGINAL

151

1
2 FINDINGS OF FACT

3 The Hearing Officer's Findings of Fact are approved with the following
4 amendment:

5 Finding 21A:

6 At the time Respondent undertook to represent Ms. Rheubottom and Mrs.
7 Wormack, a potential conflict of interest existed.²

8
9
10 ² Original Finding 21(a): "At the time Respondent undertook to represent Ms. Rheubottom and Mrs.
11 Wormack, those 2 clients were not adverse, and no conflict of interest or potential conflict of interest
existed."

12 The Hearing Officer's finding contains an error of law. A potential conflict of interest always exists
13 when a lawyer accepts representation of multiple parties, as the Court stated in *In re Marshall*, 2007
14 WASC 200 302-8 051007; "Marshall and the dissent claim that there could be no conflict of
15 interest here because the plaintiffs' interests were aligned. However, the hearing officer and
16 Board found that while they shared broad goals, including elimination of racial discrimination
17 in the longshore industry, their individual issues, needs, and claims were different. More
18 importantly, we have recognized that former RPC 1.7(b) applies even absent a direct conflict. *In*
19 *re Disciplinary Proceeding Against Egger*, 152 Wn.2d 393, 412, 98 P.3d 477 (2004). Marshall
20 himself testified that there are *potential* conflicts whenever multiple representation occurs.
21 There was a risk that Marshall would not be able to simultaneously abide by all of his clients'
22 wishes when conflicts arose among the plaintiffs. The Association also notes that the "strength
23 in numbers" strategy could work to the benefit of some, but to the detriment of others. Even if
24 Marshall reasonably believed that his representation of all of the *Jefferies* clients would not be
adversely affected, Marshall had a duty to explain to each client "the implications of the
common representation and the advantages and risks involved" and to get consent in writing
from each. Former RPC 1.7(b)(2). The dissent ignores the plain language of the rule."

There is substantial evidence in the record to support the hearing officer's and Board's
findings regarding Marshall's violation of former RPC 1.7(b). To the extent that the dissent
asserts that there was no *actual* conflict in this case, it forgets that the rule requires full
disclosure of *potential* conflicts and written consent of the client where multiple representation
may materially affect the client's case. Former RPC 1.7(b)."

1
2 Finding 158

3 Respondent has been the subject of three prior disciplinary offenses: (a) a May
4 1989 admonition for failure to put funds in a trust account and lack of response to
5 a WSBA request for information (Exhibit 153); and (b) a July 17, 1998 reprimand
6 for filing a declaration in an action, knowing that the signatures were not
7 authentic Exhibit 152; and a 1997 18 month suspension for (1) deceitful conduct
8 in violation of RPC 8.4(c), (2) improperly charging contract attorney fees as costs
9 in violation of RPC 1.5; (3) failing to maintain complete records of client funds,
10 provide client accountings and remit client funds upon request, violation of RPC
11 1.14, and representing multiple clients without explaining the implications of
12 common representation or obtaining written consent, in violation of RPC 1.7(b).³

13 Finding 159

14 Exhibit 150 is admitted and considered.⁴

15 The Board upholds the Hearing Officer's disbarment recommendation.

16
17 ³ Original Finding 158: "Respondent has been the subject of two prior disciplinary
18 offenses: (a) a May 1989 admonition for failure to put funds in a trust account and lack
19 of response to a WSBA request for information (Exhibit 153); and (b) a July 17, 1998
20 reprimand for filing declaration in an action, knowing that the signatures were not
21 authentic Exhibit 152." On May 10, 2007, the Supreme Court issued an opinion
22 suspending Respondent for 18 months. *In re Marshall*, 2007 WASC 200 302-8 051007.
23 Respondent was aware that he was being investigated in the 2007 suspension matter at
24 the time he committed the misconduct involved in this current case. Consequently,
Respondent has three prior disciplinary offenses that are properly considered.

⁴ Original Finding 159: "The Hearing Officer did not admit or consider discipline that is
pending in front of the Washington State Supreme Court, but did allow to be marked
Exhibit 150 and 450 as an offer of proof and Respondent's counteroffer of proof Exhibit
450." Exhibits 150 and 450 are admitted and considered.

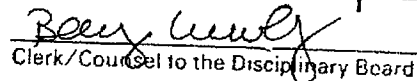
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4 Dated this 25th day of January, 2008.

5
6 

7 William Carlson, Vice Chair
8 Disciplinary Board

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10
11
12 CERTIFICATE OF SERVICE

13 I certify that I caused a copy of the Order Modifying HO Decision
14 to be delivered to the Office of Disciplinary Counsel and to be mailed
15 to Bradley Marshall, Respondent/Respondent's Counsel
16 at 21 Lakeside Ave Ste 1008 Seattle, WA 98101, by Certified/first class mail,
17 postage prepaid on the 25 day of January, 2008

18 
19 Clerk/Counsel to the Disciplinary Board